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U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
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U.S. Citizenship and Immigration Services

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[redacted]

FILE: [redacted] Office: TEXAS SERVICE CENTER Date: DEC 0 1 2010
SRC 06 239 52102

IN RE: Petitioner:
Beneficiary: [redacted]

PETITION: Immigrant Petition for Alien Worker as a Member of the Professions Holding an Advanced Degree or an Alien of Exceptional Ability Pursuant to Section 203(b)(2) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(2)

ON BEHALF OF PETITIONER:

SELF-REPRESENTED

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion. The fee for a Form I-290B is currently $585, but will increase to $630 on November 23, 2010. Any appeal or motion filed on or after November 23, 2010 must be filed with the $630 fee. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Marie Johnson

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The Director, Texas Service Center, denied the employment-based immigrant visa petition, which is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner seeks classification pursuant to section 203(b)(2) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(2), as an alien of exceptional ability. According to part 5 of the petition, the petitioner is a "Physician of rehabilitative medicine." The petitioner did not complete part 6 about the proposed employment. The petitioner indicates that he continues his research, offers advice to Korean American physicians regarding integrating "western and oriental medicine" and plans "to establish an institute of rehabilitative medicine." In response to the director's request for additional evidence, the petitioner submitted letters indicating he was working as a massage therapist.

The petitioner asserts that an exemption from the requirement of a job offer, and thus of an alien employment certification, is in the national interest of the United States. The director concluded that because the petitioner did not appear to be a member of the professions holding an advanced degree he would need to demonstrate exceptional ability. The director, however, did not expressly address the regulatory criteria for aliens of exceptional ability set forth at 8 C.F.R. § 204.5(k)(3)(ii). Rather, the director's decision primarily concluded that the petitioner had not established that an exemption from the requirement of a job offer would be in the national interest of the United States.

On appeal, the petitioner submits a statement and additional evidence. For the reasons discussed below, we uphold the director's decision. Moreover, we find that the petitioner has not established eligibility for the classification sought as an alien of exceptional ability (or as a member of the professions with an advanced degree). An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the Service Center does not identify all of the grounds for denial in the initial decision. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*, 345 F.3d 683 (9th Cir. 2003); *see also Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004) (noting that the AAO conducts appellate review on a *de novo* basis).

Section 203(b) of the Act states in pertinent part that:

> (2) Aliens who are members of the professions holding advanced degrees or aliens of exceptional ability. --
>
> > (A) In general. -- Visas shall be made available . . . to qualified immigrants who are members of the professions holding advanced degrees or their equivalent or who because of their exceptional ability in the sciences, arts, or business, will substantially benefit prospectively the national economy, cultural or educational interests, or welfare of the United States, and whose services in the sciences, arts, professions, or business are sought by an employer in the United States.

(B) Waiver of job offer.

(i) . . . the Attorney General may, when the Attorney General deems it to be in the national interest, waive the requirements of subparagraph (A) that an alien's services in the sciences, arts, professions, or business be sought by an employer in the United States.

I. Exceptional Ability

As stated above, the petitioner seeks classification as an alien of exceptional ability. The regulation at 8 C.F.R. § 204.5(k)(3)(ii) sets forth the following six criteria, at least three of which an alien must meet in order to qualify as an alien of exceptional ability in the sciences, the arts, or business:

(A) An official academic record showing that the alien has a degree, diploma, certificate, or similar award from a college, university, school, or other institution of learning relating to the area of exceptional ability

(B) Evidence in the form of letter(s) from current or former employer(s) showing that the alien has at least ten years of full-time experience in the occupation for which he or she is being sought

(C) A license to practice the profession or certification for a particular profession or occupation

(D) Evidence that the alien has commanded a salary, or other remuneration for services, which demonstrates exceptional ability

(E) Evidence of membership in professional associations

(F) Evidence of recognition for achievements and significant contributions to the industry or field by peers, governmental entities, or professional or business organizations

If a petitioner has submitted the requisite evidence, U. S. Citizenship and Immigration Services (USCIS) determines whether the evidence demonstrates "a degree of expertise significantly above that ordinarily encountered." 8 C.F.R. § 204.5(k)(2). *Kazarian v. USCIS*, 596 F.3d 1115 (9th Cir. 2010), sets forth a two-part approach where the evidence is first counted and then considered in the context of a final merits determination. While involving a different classification than the one at issue in this matter, the similarity of the two classifications makes the court's reasoning persuasive to the classification sought in this matter. In reviewing Service Center decisions, the AAO will apply the test set forth in *Kazarian*. As the AAO maintains *de novo* review, the AAO will conduct a new analysis if the director reached his or her conclusion by using a one-step analysis rather than the two-step analysis

dictated by the *Kazarian* court. *See* 8 C.F.R. 103.3(a)(1)(iv); *Soltane v. DOJ*, 381 F.3d at 145; *Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d at 1043 (recognizing the AAO's *de novo* authority).

Evidentiary Criteria

> *An official academic record showing that the alien has a degree, diploma, certificate, or similar award from a college, university, school, or other institution of learning relating to the area of exceptional ability*

The record contains a Certificate of Graduation from Hoseo University confirming that the petitioner earned a Bachelor of Physical Education in 1995. The transcript reflects that this degree is a four-year degree. The petitioner did not submit an evaluation of this degree reflecting its U.S. equivalence. The petitioner also submitted the following credentials:

1. Certificate of Completion for a Sports Masseur course at the Nathan Sports Injury Science Research Institute,

2. Course Completion Certification for "The Course of Traditional Medicine" from the Chimkorea Cyber Academy,

3. "Professional Technology Certifiction [*sic*] of Ssenior [*sic*] China Equilibrium Acupuncture" from the Gerontology and Balance Acupuncture Association of China and the Health Protection Association of Balance Medicine Research Association of China,

4. Credit Hour Certificate on National Continuous Education of Chinese Medicine – Practical Technology of Chinese Balance Acupuncture and Moxibustion from the Balance Acupuncture and Moxibustion Committee of the Chinese Gerontics Society,

5. "Qulification [*sic*]" from Hanseo University for "completing the courses of O.C.M. Class in the Social Physical Education Center."

6. Certificate of Study from Seoul University certifying the petitioner's completion of "3rd grade education of Balance Acupuncture Therapeutic Process," and

7. Certificate for successful completion of a 500 hour course in American Korean Massage Therapy from the Onyx Massage Institute.

In response to the director's request for additional evidence, the petitioner submitted evidence that he enrolled in a Master of Science program in Health Science and Acupuncture at the New York College of Traditional Chinese Medicine. The petitioner enrolled in this program in January 2007,

after the filing date of the petition. Thus, this evidence cannot be considered. *See* 8 C.F.R. §§ 103.2(b)(1), (12); *Matter of Katigbak,* 14 I&N Dec. 45, 49 (Reg'l. Comm'r. 1971).

While we cannot consider the post-filing education, the petitioner submitted other qualifying evidence that meets the plain language requirements of the regulation at 8 C.F.R. § 204.5(k)(3)(ii)(A).

> *Evidence in the form of letter(s) from current or former employer(s) showing that the alien has at least ten years of full-time experience in the occupation for which he or she is being sought*

The only letters from employers in the record are December 8, 2008 letters from [redacted] advising that the petitioner had been working as a massage therapist on [redacted] in New Jersey. [redacted] specified that the petitioner had only been working there for twelve months. The petition was filed on August 3, 2006. Thus, this letter cannot demonstrate any employment prior to the date of filing, the date as of which the petitioner must establish his eligibility. *See* 8 C.F.R. §§ 103.2(b)(1), (12); *Matter of Katigbak,* 14 I&N Dec. at 49.

In light of the above, the petitioner has not submitted qualifying evidence that meets the plain language requirements set forth at 8 C.F.R. § 204.5(k)(3)(ii)(B).

> *A license to practice the profession or certification for a particular profession or occupation*

The petitioner submitted the following certifications:

1. Qualification of Therapeutic Gymnastic Master from the Korean Hwal Ki Do Reformation Association,

2. Certificate of Teacher's Qualification from the Korean Hwal Ki Do Reformation Association,

3. Black Belt Certification from the Korea Hwal Ki Do Reformation Association,

4. Chiropractic Certification from the Korea Chiropractic Association,

5. Certification as a Sports Massage Master from the Korean Association of Sport for All Sports-Massage Association,

6. Certification of Qualification as a Sports Massage Master from the Korea Sports Massage Association,

7. Certification as a Foot Care Master from the Korea Footcare Association, Practical Technology Certification of China Balance Acupuncture from the Gerontology and Balance Acupuncture Association of China and the Acupuncture and Moxibustion Institute of Beijing and the University of Traditional Chinese Medicine,

8. Doctor Certificate of China Equilibrium Acupuncture from the Gerontology and Balance Acupuncture Association of China, the Beijing Balance Acupuncture Research Center and the Health Protection and Balance Medicine Research Association of China, and

9. Certificate of Second Grade Instructor in Hwal Ki Do (Way of Conduction and Circulation Improvement) from the Director of the Korean Association of Sport for All.

The above evidence meets the plain language requirements set forth at 8 C.F.R. § 204.5(k)(3)(ii)(C).

Evidence that the alien has commanded a salary, or other remuneration for services, which demonstrates exceptional ability

The petitioner did not submit any evidence of his past salaries or other remuneration. Thus, he has not submitted qualifying evidence under 8 C.F.R. § 204.5(k)(3)(ii)(D).

Evidence of membership in professional associations

As quoted above, the regulation at 8 C.F.R. § 204.5(k)(3)(ii)(C) provides for licensure or certification in a profession "or occupation." Thus, the regulation at 204.5(k)(3) is clearly capable of including other occupations in addition to professions. The plain language of the regulation at 8 C.F.R. § 204.5(k)(3)(ii)(E), by contrast, requires evidence of membership in "professional" associations. Section 101(a)(32) of the Act, states that a profession "shall include but not be limited to architects, engineers, lawyers, physicians, surgeons, and teachers in elementary or secondary schools, colleges, academies, or seminaries." The regulation at 8 C.F.R. § 204.5(k)(2) defines "profession" as "one of the occupations listed in section 101(a)(32) of the Act, as well as any occupation for which a United States baccalaureate degree or its foreign equivalent is the minimum requirement for entry into the occupation."

The petitioner submitted evidence of his membership in the Committee of Chinese Balance Acupuncture and the Korea Mental Equilibrium and International Equilibrium Medical Service Group. The petitioner has not established that these are "professional" associations. Specifically, they are not associations for architects, engineers, lawyers or teachers. While they may be health associations, there is no evidence that the membership is limited to physicians or surgeons. While it is unclear what occupation falls under "equilibrium," the record contains no evidence that acupuncturists require a U.S. baccalaureate or foreign equivalent degree as the minimum requirement for entry into the occupation. The regulation at 8 C.F.R. § 204.5(k)(3)(ii)(E) requires membership in qualifying associations in the plural; so both memberships must be qualifying. It is the petitioner's

burden to demonstrate what occupation is covered by "equilibrium" and that the occupation is a "profession" as defined by statute and regulation.

In light of the above, the petitioner has not submitted qualifying evidence that meets the plain language requirements of 8 C.F.R. § 204.5(k)(3)(ii)(E).

> *Evidence of recognition for achievements and significant contributions to the industry or field by peers, governmental entities, or professional or business organizations*

Letters from colleagues and employers prepared in support of the petition cannot serve as qualifying evidence of recognition. The record contains no formal recognition for achievements and significant contributions to the petitioner's field of rehabilitative medicine from peers, governmental entities or professional or business organizations. Thus, the petitioner has not submitted qualifying evidence that meets the plain language requirements set forth at 8 C.F.R. § 204.5(k)(3)(ii)(F).

In light of the above, the petitioner has not submitted evidence that meets three of the criteria that must be satisfied to establish the minimum eligibility requirements for this classification. Specifically the petitioner submitted qualifying evidence to meet only the criteria set forth at 8 C.F.R. §§ 204.5(k)(3)(ii)(A) and (C). Nevertheless, we will conduct a final merits determination that considers whether or not the petitioner has demonstrated "a degree of expertise significantly above that ordinarily encountered." 8 C.F.R. § 204.5(k)(2).

Section 203(b)(2)(C) of the Act provides that the possession of a degree, diploma, certificate or similar award from a college, university school or other institution of learning or a license to practice or certification for a particular profession or occupation shall not by itself be considered sufficient evidence of exceptional ability. Thus, in our final merits determination, we must determine whether the beneficiary's degree and other academic credentials and licenses are indicative of or consistent with a degree of expertise significantly above that ordinarily encountered.

We note that while the petitioner is working as a massage therapist, he claims to be a physician in rehabilitation medicine and that he will establish an institute in this field. According to the Department of Labor's Occupational Outlook Handbook (OOH), physicians in the United States must have a degree from an accredited medical school, complete a residency program and be licensed.[1] *See* http://www.bls.gov/oco/ocos074.htm#training (accessed November 4, 2010 and incorporated into the record of proceeding). According to the same source, physical therapists require a post-baccalaureate degree from a program accredited by the American Physical Therapy Association and must be licensed by the state. *See* http://www.bls.gov/oco/ocos080.htm#training (accessed November 4, 2010 and incorporated into the record of proceeding). Chiropractors must be licensed, which requires 2 to 4 years of undergraduate education, the completion of a four-year

[1] Graduates from foreign medical schools are eligible for licensure after passing an examination and must still complete a residency program.

chiropractic college course, and passing scores on national and state examinations. *See* http://www.bls.gov/oco/ocos071.htm#training (accessed November 4, 2010 and incorporated into the record of proceeding). Even massage therapists in New Jersey must be licensed to use the titles "massage, bodywork and somatic therapist," "registered massage bodywork and somatic therapist," "certified massage bodywork and somatic therapist," "certified massage therapist," or the abbreviations MBT, RMBT, CMBT, COBT or CMT." N.J. Stat. Ann. § 45:11-65.[2]

As stated above, the petitioner has not submitted an evaluation of his baccalaureate degree. Moreover, the record contains no evidence establishing the significance or reputation of any of the organizations that have issued the petitioner certificates and licenses. Given the above information from the OOH and New Jersey licensure laws for massage therapists, we cannot conclude that the petitioner's baccalaureate degree in physical education and academic credentials and licenses from entities of unknown accreditation are indicative of a degree of expertise significantly above that ordinarily encountered in rehabilitative medicine.

Even if we were to consider the petitioner's memberships as qualifying under 8 C.F.R. § 204.5(k)(3)(ii)(E), the record contains no information about the associations of which the petitioner is a member such that we can determine whether these memberships are indicative of or consistent with a degree of expertise significantly above that ordinarily encountered.

In light of the above, the petitioner has not established that he is an alien of exceptional ability in rehabilitative medicine or that he even has the necessary competency to work as a physician, chiropractor or physical therapist in the United States.

II. Advanced Degree Professional

While the petitioner has never claimed to be a member of the professions holding an advanced degree we will examine this issue as well. The first question is whether the petitioner is a member of the professions. As stated above, section 101(a)(32) of the Act, states that a profession "shall include but not be limited to architects, engineers, lawyers, physicians, surgeons, and teachers in elementary or secondary schools, colleges, academies, or seminaries." The regulation at 8 C.F.R. § 204.5(k)(2) defines "profession" as "one of the occupations listed in section 101(a)(32) of the Act, as well as any occupation for which a United States baccalaureate degree or its foreign equivalent is the minimum requirement for entry into the occupation."

While the petitioner describes himself as a "physician" on the petition, the record contains no evidence that he is a qualified doctor of medicine or osteopathy. At issue, then is whether the petitioner works in an occupation that requires a U.S. baccalaureate or foreign equivalent for entry into the occupation. As stated above, the petitioner has not demonstrated that he is qualified to work

[2] We acknowledge that the law does not preclude an unlicensed individual from providing massage therapy provided the individual does not use one of the titles listed here.

as a chiropractor or a physical therapist in the United States. Rather, the petitioner has recently secured employment as a massage therapist. According to the OOH, a baccalaureate or foreign equivalent is not required for employment as a massage therapist. http://www.bls.gov/oco/ocos295.htm#training (accessed November 4, 2010 and incorporated into the record of proceeding. Thus, the petitioner is not a member of the professions.

The next issue is whether the petitioner holds an advanced degree. An advanced degree is a United States academic or professional degree or a foreign equivalent degree above the baccalaureate level. 8 C.F.R. § 204.5(k)(2). The regulation further states: "A United States baccalaureate degree or a foreign equivalent degree followed by at least five years of progressive experience in the specialty shall be considered the equivalent of a master's degree. If a doctoral degree is customarily required by the specialty, the alien must have a United States doctorate or a foreign equivalent degree." *Id.*

The petitioner received a baccalaureate in physical education in 1995. As stated above, the petitioner did not submit a credentials evaluation indicating the equivalence of this degree in the United States. Even if we concluded that this degree is a foreign equivalent degree to a U.S. baccalaureate, the petitioner would need to document at least five years of progressive experience in the specialty. While more than five years have elapsed since the petitioner obtained his baccalaureate, the regulation at 8 C.F.R. § 204.5(g)(1) states that evidence of experience shall consist of letters from the alien's employers. As stated above, the only letters from employers discuss employment that postdates the filing of the petition. The petitioner must be eligible as of the date of filing. *See* 8 C.F.R. §§ 103.2(b)(1), (12); *Matter of Katigbak,* 14 I&N Dec. at 49. Moreover, the petitioner would need to demonstrate that his experience has been progressive and in the field of rehabilitation medicine. Nothing in the letters discussing the petitioner's work as a massage therapist suggest his work has been progressive.

In light of the above, the petitioner has not documented that he qualifies for the classification sought either as an alien of exceptional ability or as a member of the professions holding an advanced degree. Nevertheless, in the interest of thoroughness and because it was the director's sole basis of denial, we will consider the petitioner's assertions that the alien employment certification process should be waived in the national interest.

II. National Interest

Neither the statute nor pertinent regulations define the term "national interest." Additionally, Congress did not provide a specific definition of the phrase, "in the national interest." The Committee on the Judiciary merely noted in its report to the Senate that the committee had "focused on national interest by increasing the number and proportion of visas for immigrants who would benefit the United States economically and otherwise. . . ." S. Rep. No. 55, 101st Cong., 1st Sess., 11 (1989).

A supplementary notice regarding the regulations implementing the Immigration Act of 1990 (IMMACT), published at 56 Fed. Reg. 60897, 60900 (Nov. 29, 1991), states, in pertinent part:

> The Service believes it appropriate to leave the application of this test as flexible as possible, although clearly an alien seeking to meet the [national interest] standard must make a showing significantly above that necessary to prove the "prospective national benefit" [required of aliens seeking to qualify as "exceptional."] The burden will rest with the alien to establish that exemption from, or waiver of, the job offer will be in the national interest. Each case is to be judged on its own merits.

Matter of New York State Dep't. of Transp., 22 I&N Dec. 215, 217-18 (Comm'r. 1998) (hereinafter "NYSDOT"), has set forth several factors which must be considered when evaluating a request for a national interest waiver. First, the petitioner must show that the alien seeks employment in an area of substantial intrinsic merit. *Id.* at 217. Next, the petitioner must show that the proposed benefit will be national in scope. *Id.* Finally, the petitioner seeking the waiver must establish that the alien will serve the national interest to a substantially greater degree than would an available U.S. worker having the same minimum qualifications. *Id.* at 217-18.

It must be noted that, while the national interest waiver hinges on *prospective* national benefit, the petitioner must establish that the alien's past record justifies projections of future benefit to the national interest. *Id.* at 219. The petitioner's subjective assurance that the alien will, in the future, serve the national interest cannot suffice to establish prospective national benefit. The inclusion of the term "prospective" is used here to require future contributions by the alien, rather than to facilitate the entry of an alien with no demonstrable prior achievements, and whose benefit to the national interest would thus be entirely speculative. *Id.*

The director did not contest that the petitioner works in an area of intrinsic merit, rehabilitative medicine, or that the proposed benefits of his work, integration of so-called traditional medicine into so-called medicine, would be national in scope. While we do not question the popularity of so-called complementary or alternative medicine, we will not consider "traditional" or "alternative" medicine as a separate field.

> There is only scientifically proven, evidence-based medicine supported by solid data or unproven medicine, for which scientific evidence is lacking. Whether a therapeutic practice is 'Eastern' or 'Western,' is unconventional or mainstream, or involves mind-body techniques or molecular genetics is largely irrelevant except for historical purposes and cultural interest.

Fontanarosa PB, Lundberg GD, "Alternative medicine meets science," *Journal of the American Medical Association* 280: 1618-1619, 1998. This does not mean that we will not consider treatments termed "alternative" or "complimentary," merely that we require the same standard of evidence indicative of the treatment's effectiveness as we would from a researcher claiming to have developed a new cancer drug at a mainstream medical research institution. Moreover, "Chinese" or "Korean" medicine can include many concepts including herbs, acupuncture, etc. Thus, in order for the

petitioner to demonstrate that he works in an area of substantial intrinsic merit, he must demonstrate that his particular area of treatment is widely accepted as beneficial or at least promising. The petitioner relies on anecdotal affirmations from his patients, employers and members of the medical field with whom he is acquainted. The petitioner also submitted a letter inviting him to present his papers at the 2004 China Invitational Symposium on Rehabilitative Medicine. The petitioner did not submit any evidence regarding this symposium or its stature in the field of rehabilitative medicine. The petitioner also failed to demonstrate that the conference publishes peer reviewed proceedings.

On appeal, the petitioner discusses anecdotes of accomplishments by those who practice traditional medicine, including a qigong expert able to withstand temperatures of 250 centigrade. At issue, however, are the merits of the petitioner's personal therapies. On appeal, the petitioner discusses his "recipes for tea therapy" but acknowledges that his "new approach has not been adequately appraised."

Without evidence that the petitioner is pursuing medical research in scientifically sound trials in an area widely accepted as promising, we cannot conclude that the petitioner works in an area of substantial intrinsic merit.

The next issue is whether the proposed benefits would be national in scope. *NYSDOT,* 22 I&N Dec. at 217, n.3, provides the following examples where the proposed benefits would not be national in scope:

> For instance, pro bono legal services as a whole serve the national interest, but the impact of an individual attorney working pro bono would be so attenuated at the national level as to be negligible. Similarly, while education is in the national interest, the impact of a single schoolteacher in one elementary school would not be in the national interest for purposes of waiving the job offer requirement of section 203(b)(2)(B) of the Act. As another example, while nutrition has obvious intrinsic value, the work of one cook in one restaurant could not be considered sufficiently in the national interest for purposes of this provision of the Act.

Id.

As stated above, the petitioner is currently working as a massage therapist and providing tea therapy to local patients. The record lacks evidence that such work would have a national impact. We acknowledge that the petitioner initially stated that he would conduct research and establish an institute. The petitioner cannot meet the national scope requirement by presenting a hypothetical means by which an occupation with an ordinarily local impact might have a wider impact. The record lacks evidence that the petitioner's proposal to perform or be the subject of research and open an institute is a credible proposal. For example, the record contains no evidence that prestigious institutions, such as the National Institutes of Health's National Center of Complementary and Alternative Medicine, has any interest in funding or investigating the petitioner's claims or that he

has the financial means and business acumen to open his own institute. Thus, the petitioner's claims regarding future research and the establishment of an institute are too speculative to consider. The petitioner has not demonstrated that the benefits of his work as a massage therapist will be national in scope.

Finally, even assuming we agreed that the petitioner works in an area of substantial intrinsic merit and that the proposed benefits would be national in scope, it remains to determine whether the petitioner will benefit the national interest to a greater extent than an available U.S. worker with the same minimum qualifications.

Eligibility for the waiver must rest with the alien's own qualifications rather than with the position sought. In other words, we generally do not accept the argument that a given project is so important that any alien qualified to work on this project must also qualify for a national interest waiver. At issue is whether this petitioner's contributions in the field are of such unusual significance that the petitioner merits the special benefit of a national interest waiver, over and above the visa classification he seeks. By seeking an extra benefit, the petitioner assumes an extra burden of proof. A petitioner must demonstrate a past history of achievement with some degree of influence on the field as a whole. *Id.* at 219, n. 6.

The petitioner submitted several academic and occupational credentials. The petitioner has not explained why these requirements could not be enumerated on an application for alien employment certification. Special or unusual knowledge or training, while perhaps attractive to the prospective U.S. employer, does not inherently meet the national interest threshold. *Id.* at 221. The petitioner's education, licenses and memberships also relate to the requirements for aliens of exceptional ability. Even if we had concluded that such evidence demonstrated the petitioner's eligibility for that classification, it normally requires an approved alien employment certification. Exceptional ability, by itself, does not justify a waiver of the alien employment certification; thus evidence relating to the criteria for that classification, while relevant, is not dispositive of the national interest waiver. *Id.* at 222.

As stated above, the petitioner submitted a letter advising that the China Invitational Symposium on Rehabilitative Medicine had accepted two of the petitioner's articles for presentation in August 2004. The petitioner filed the petition in 2006 and indicated that he had most recently entered the United States in May 2004. Thus, it does not appear that the petitioner presented these articles at a symposium in China in August 2004. The record contains no evidence that the symposium published the petitioner's articles in their proceedings or that a peer-reviewed journal has published these articles. Rather, the petitioner submitted the manuscripts of these articles with no indicia of publication. The record also lacks any evidence as to how many people attended the symposium, who else presented work there or other evidence of its significance.

The petitioner also submitted a letter from the Editorial Department of *New Medicine* in Guangzhou advising of their intent to publish the petitioner's article on early signs of disease in different viscera.

This publication postdates the filing of the petition and cannot be considered. *See* 8 C.F.R. §§ 103.2(b)(1), (12); *Matter of Katigbak*, 14 I&N Dec. at 49. Moreover, the petitioner did not submit any information about this journal such as its circulation or impact factor.

The remaining evidence consists of letters from the petitioner's patients, coworkers and other acquaintances. The petitioner asserts that he collaborated for two years with [redacted]. The petitioner submitted a letter from [redacted] who does not indicate that she has a medical degree or a [redacted] she states that she and the petitioner are "both interested in the integration of holistic medicine, and his research on rehabilitative medicine has many things in common with" her own research. She does not provide any examples of her own published articles, research grants or other evidence that she conducts medically sound research. [redacted] states:

> Along with the progress of his research, I deeply felt that his knowledge range is very wide, which is very suitable for integration of Western medicine and oriental medicine. Moreover, [the petitioner] is not limited to his mastery of many branch fields of medicine. His quality of a scientist is also manifested in his constant updating of his research methodology to catch up with the development of sciences. For example, his research of rehabilitative medicine encompasses sport medicine, Western medicine and oriental medicines in addition to sociology, psychology, and culinary arts. For a researcher at his age, such wide covering is wonderful. More valuable is his comprehension of different knowledge to find their common points and intersections instead of mere accumulation. Such ability is indispensible for scientific investigation.

[redacted] then asserts that the petitioner has traveled to collect information about folk medicine and different types of traditional medicine, with requires "extraordinary diligence." These statements are all vague generalizations that are not helpful in analyzing the petitioner's actual past accomplishments. [redacted] does not identify a single discovery by the petitioner or explain how it has influenced the field of rehabilitative medicine.

[redacted] asserts that he has attended seminars by the petitioner and has been a patient. [redacted] affirms that he recovered from severe arthritis under the petitioner's care and that the petitioner "was able to do minor surgery operation with anesthesia by acupuncture instead of by drug injection." [redacted] Wang does not address the ethics of performing surgery without being a licensed surgeon. [redacted] then praises the petitioner's approximately one hundred herb tea recipes for therapy and health. [redacted] does not suggest that any of these recipes have been the subject of scientifically valid research or that they are being utilized nationwide.

[redacted] an alleged orthopedist with a degree from Henan College of Traditional Medicine, asserts that the petitioner "is able to diagnose gastric ulcer and many other diseases of the viscera by simply testing the patients feeling on the ear when he uses an acupuncture needle to stitch a certain region on the ear, instead of complicated and expensive lab tests." [redacted] does not indicate that

scientifically valid research has validated this diagnostic technique or that it is being applied by anyone other than the petitioner.

The petitioner then submitted evidence from the physicians and physical therapists for whom he works as a massage therapist. These letters praise the petitioner's knowledge and skill but fail to explain how the petitioner has influenced the field of rehabilitation medicine. These individuals do not appear to have been familiar with the petitioner prior to the date of filing. Two additional patients praise the petitioner's skills as a massage therapist. These letters cannot demonstrate the petitioner's influence beyond his own patients.

On appeal, the petitioner submits a letter from [redacted] in New Jersey, asserting that he has learned from the petitioner and that the petitioner has "carried out long time research on composite Qi Gong therapy, which is much enjoyable with less side effects, as well as more economical." [redacted] concludes that a degree is not always indicative of ability and that "practice makes perfect." At issue, however, is whether the petitioner has a track record of success with some degree of influence in the field as a whole. This letter from a local health practitioner cannot demonstrate the wider impact of the petitioner's work.

Finally [redacted] Glory Church, asserts that the petitioner directs the church's Healing Mission program. Once again, this letter does not establish the petitioner's wider influence.

The Board of Immigration Appeals (the Board) has held that testimony should not be disregarded simply because it is "self-serving." *See, e.g., Matter of S-A-*, 22 I&N Dec. 1328, 1332 (BIA 2000) (citing cases). The Board also held, however: "We not only encourage, but require the introduction of corroborative testimonial and documentary evidence, where available." *Id.* If testimonial evidence lacks specificity, detail, or credibility, there is a greater need for the petitioner to submit corroborative evidence. *Matter of Y-B-*, 21 I&N Dec. 1136 (BIA 1998).

Even if we considered the letters to be from experts in rehabilitation medicine, the opinions of experts in the field are not without weight and have been considered above. USCIS may, in its discretion, use as advisory opinions statements submitted as expert testimony. *See Matter of Caron International*, 19 I&N Dec. 791, 795 (Comm'r. 1988). However, USCIS is ultimately responsible for making the final determination regarding an alien's eligibility for the benefit sought. *Id.* The submission of letters from experts supporting the petition is not presumptive evidence of eligibility; USCIS may, as we have done above, evaluate the content of those letters as to whether they support the alien's eligibility. *See id.* at 795; *see also Matter of V-K-*, 24 I&N Dec. 500, n.2 (BIA 2008) (noting that expert opinion testimony does not purport to be evidence as to "fact"). USCIS may even give less weight to an opinion that is not corroborated, in accord with other information or is in any way questionable. *Id.* at 795; *see also Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm'r. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg'l. Comm'r. 1972)).

The letters considered above primarily contain vague assertions of skill without specifically identifying innovations and providing specific examples of how those innovations have influenced the field. Merely repeating the language of the statute or regulations does not satisfy the petitioner's burden of proof.[3] The petitioner submitted no letters from independent medical experts with a record of peer reviewed publications in well ranked journals of rehabilitation medicine. The petitioner also failed to submit corroborating evidence in existence prior to the preparation of the petition, which could have bolstered the weight of the reference letters.

As is clear from a plain reading of the statute, it was not the intent of Congress that every person qualified to engage in a profession in the United States should be exempt from the requirement of a job offer based on national interest. Likewise, it does not appear to have been the intent of Congress to grant national interest waivers on the basis of the overall importance of a given profession, rather than on the merits of the individual alien. On the basis of the evidence submitted, the petitioner has not established that a waiver of the requirement of an approved alien employment certification will be in the national interest of the United States.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden.

This denial is without prejudice to the filing of a new petition by a United States employer accompanied by an alien employment certification certified by the Department of Labor, appropriate supporting evidence and fee.

ORDER: The appeal is dismissed.

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[3] *Fedin Bros. Co., Ltd. v. Sava*, 724 F. Supp. 1103, 1108 (E.D.N.Y. 1989), *aff'd*, 905 F. 2d 41 (2d. Cir. 1990); *Avyr Associates, Inc. v. Meissner*, 1997 WL 188942 at *5 (S.D.N.Y.). Similarly, USCIS need not accept primarily conclusory assertions. *1756, Inc. v. The Attorney General of the United States*, 745 F. Supp. 9, 15 (D.C. Dist. 1990).